MAAP2015-P-0057-01
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{155296}{309-150225:105744}{022015}

# APPELLANT'S BRIEF

COMMONWEALTH OF MASSACHUSETTS

# Appeals Court

No. 2015-P-0057

NORFOLK COUNTY

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CHARTER OAK FIRE INSURANCE COMPANY AND
BARLETTA HEAVY DIVISION, INC.,
PLAINTIFFS-APPELLEES,

*v.*

GREGORY PATNOD D/B/A PATNOD TRUCKNG & EXC AND
SAFETY INSURANCE COMPANY,
DEFENDANTS-APPELLANTS.

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ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

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**BRIEF FOR THE DEFENDANT-APPELLANT,**
**SAFETY INSURANCE COMPANY**

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Peter L. Bosse, Esq., BBO #633453
Email: pbosse@BSCtrialattorneys.com
Tanya T. Austin, BBO #664478
Email: taustin@BSCtrialattorneys.com
Boyle, Shaughnessy & Campo, P.C.
695 Atlantic Avenue, 11th Floor
Boston, Massachusetts 02111
Phone: (617) 451-2000
Fax: (617) 451-5775

Dated: February 20, 2015

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## TABLE OF AUTHORITIES

**CASES:**



**OTHER AUTHORITIES:**

## STATEMENT OF ISSUES PRESENTED

1. Did the trial court err in holding that Safety had a duty to defend Barletta Heavy Division, Inc. in the claims by Salvador Tejada in Suffolk Superior Court C.A. No. SUCV2012-04091?
2. Did the trial court err in holding that Safety had a duty to indemnify Barletta Heavy Division, Inc., in the claims by Salvador Tejada in Suffolk Superior Court C.A. No. SUCV2012-04091?

## STATEMENT OF THE CASE

This appeal arises out of a coverage dispute over the additional insured status of Barletta Heavy Division, Inc., on a policy issued by Safety Insurance. Barletta, which was added as an additional insured via endorsement no earlier than December 16, 2009, sought coverage under the policy for an incident that had occurred on November 13, 2009, arguing that the lack of a specific "effective date" on the endorsement itself resulted in coverage being retroactively afforded from the date the original policy (issued to named insured Gregory Patnod) first became effective.

The parties, not disputing the underlying facts as to the respective dates of the incident itself and the subsequent issuance of the additional insured endorsement, filed Cross-Motions for Summary Judgment, seeking a declaration regarding when Barletta's additional insured status became effective for the purposes of coverage for the incident.

The trial court, holding that the lack of an effective date on the endorsement permitted coverage to be afforded for the pre-endorsement loss, entered summary judgment in favor of Barletta and denied Safety's own Motion for Summary Judgment. Safety now appeals the entry of summary judgment in Barletta's favor and the denial of Safety's Motion for Summary Judgment.

**STATEMENT OF FACTS**

Safety issued Business Auto Policy No. 3948701 to Gregory Patnod ("Patnod"), effective from August 23, 2009 through August 23, 2010. (A. 84). Gregory Patnod is the only named insured on the policy. The policy consists of a Declarations Page, Form CA 00 01 10 01 "Business Auto Coverage Form," and various other forms and endorsements listed on the Declarations Page. (A. 84).

The policy provides coverage to an "insured" for "bodily injury" caused by an "occurrence." "Insured" is defined under Form CA 00 01 10 01 as follows:

> **1. Who Is An Insured**
> The following are "insureds":
> **a.** You for any covered "auto".
> **b.** Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
> **(1)** The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
> **(2)** Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
> **(3)** Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
> **(4)** Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
> **(5)** A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
> **c.** Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

(A. 86).

At some point prior to November 13, 2009, Barletta Heavy Division ("Barletta") retained Patnod to perform trucking work on the Hultman Aqueduct Interconnection Project. (A. 8). On or about November 13, 2009, underlying tort plaintiff Salvador Tejada was allegedly injured while operating a vehicle insured under Safety Business Auto Policy No. 3948701. (A. 13). As a result of the incident on November 13, 2009, Tejada brought claims against Barletta Heavy Division ("Barletta"). (A. 13).

On or about December 16, 2009, Barbera Insurance Agency submitted a request to Safety that Barletta be added as an "additional insured" to the Safety policy. (A. 108-111). A Certificate of Insurance listing Barletta as an "additional insured" was issued by Barbera on that date. (A. 149).

On or about April 1, 2010, Barbera Insurance Agency faxed a copy of the policy's Declarations Page, and Additional Insured Endorsement Form MM 99 50 09 98—naming Barletta as an additional insured—to Barletta. (A. 12-13).

Endorsement Form MM 99 50 09 98, as faxed to Barletta, provides:

> Form MM 99 50 09 98
> Policy Number: 9748701 02
>
> THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
>
> ADDITIONAL INSURED- MASSACHUSETTS
>
> This endorsement modifies insurance provided under the following:
> BUSINESS AUTO COVERAGE FORM
>
> With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.
>
> Changes in Liability Coverage:
> Who is An Insured is changed to include the person or organization named in this endorsement, but only for "bodily injury" or "property damage" resulting from the acts or omissions of:
>
> 1. You, while using a covered "auto".
> 2. Any other person, while using a covered "auto" with your permission.
>
> Additional Insured: Barletta Heavy Division, Inc.
> 40 Shawmut Rd., Suite 200
> Canton, MA 02021

(A. 96).

On or about August 20, 2010, almost nine months after the date of the incident, Barletta and Patnod entered into a written "Subcontract" in connection with Patnod's work on the Hultman project. (A. 117).

The "Subcontract" required Patnod to name Barletta as an "additional insured" on his policy of liability insurance. (A. 137).

On or about December 6, 2011, Barletta demanded coverage as an additional insured under the Safety policy. (A. 13). Safety denied coverage on the grounds that Barletta was not an additional insured at the time of the accident. (A. 14). Other than Additional Insured Endorsement Form MM 99 50 09 98, Barletta is unaware of any provisions of the policy or other documents which support its contention that it is an "insured" under the Safety policy. (A. 118-119). Safety has contended that because the Endorsement was not issued until after the accident, it did not confer additional insured status on Barletta until the date of its issuance.

Barletta has admitted that at no time prior to November 13, 2009 did it request that Safety add the Additional Insured Endorsement to the policy, and that it has no specific knowledge of any other party making such a request on its behalf. (A. 113-116, 125). Further, Barletta has presented no evidence that would indicate that Barletta was ever added, or requested to

have been added, as additional insured before November 13, 2009.

**STANDARD OF REVIEW**

Courts review the disposition of a Motion for Summary Judgment *de novo*, Miller v. Cotter, 448 Mass. 671, 676 (2007), to determine whether all material facts have been established such that the moving party is entitled to judgment as a matter of law. Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). A court must construe "all facts in favor of the nonmoving party," *see* Miller, *supra*. Here, because Safety Insurance Company has appealed the trial court's denial of its Motion for Summary Judgment and the allowance of Barletta's Motion for Summary Judgment, this court should consider the matter *de novo*.

**ARGUMENT**

At issue in this appeal is the applicability of a fundamental tenet of insurance coverage—that an insurer, by issuing an insurance contract, undertakes to make payment in the event that a covered loss occurs (or is discovered) at some point *in the future*. An insurance contract is not an agreement to pay for a loss that has already occurred and is known to the

insured at the time the contract is issued—such a contract would not be a contract of insurance, but rather a simple (and unequal) exchange of funds.

Commonly-held definitions of insurance uniformly support this statement. Black's Law Dictionary defines "insurance" as "a contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurrence of some specified contingency, and usu. to defend the insured or to pay for a defense regardless of whether the insured is ultimately found liable." Black's Law Dictionary 814 (8th ed. 2004). In turn, "risk" is defined as "the uncertainty of a result, happening, or loss; the chance of injury, damage, or loss; esp. the existence and extent of the possibility of harm … the chance or degree of probability of loss to the subject matter of an insurance policy." Black's Law Dictionary 1353 (8th ed. 2004). It is apparent that covered losses are those for which there is a future possibility of occurrence—not those which have already been established as having occurred.

Similarly, Webster defines "insurance" as "the act, system or business of insuring property, life,

one's person, etc., against loss or harm arising in specified contingencies, as fire, accident, death, disablement, or the like, in consideration of a payment proportionate to the risk involved." Inherent in this definition is the idea that payment is only made *if* a loss occurs—not because a loss has already occurred. Webster's New Universal Unabridged Dictionary, 989 (2003).

Here, as acknowledged by the trial court, it is clear from the record that the Additional Insured Endorsement was not issued until December 16, 2009, at the earliest—over a month after the incident that is the basis of the claims against Barletta. The record contains a December 16, 2009 request that Barletta be added as additional insured, and there is no indication that any earlier request was ever made. Appellant Safety Insurance Company issued the Additional Insured endorsement naming Barletta Heavy Division as an insured on its policy for ongoing work on a construction project, understanding that such coverage—as all insurance coverage—would be prospective only. Barletta then sought coverage for an incident that had occurred more than a month prior to its having been so named, despite the fact that

Barletta had known of the incident from the outset, had never submitted a request to Safety to be named on the policy before the accident, and had no reason to believe that Safety, for the payment of no additional premium, would have agreed to take on the liability of paying for a known prior loss.

By ruling that the issuance of the endorsement more than a month after the incident required Safety to defend and indemnify Barletta for the claims arising out of that incident, the trial court made a fundamental error of law.

## I. THERE CAN BE NO COVERAGE FOR A KNOWN LOSS UNDER MASSACHUSETTS LAW.

Because the Additional Insured Endorsement contained no effective date, Barletta has argued, it must be deemed to be effective retroactively, as of the inception date of the policy. However, where a loss has occurred prior to the date the endorsement was issued this contention flies in the face of every principle upon which insurance law is based, as such retroactive coverage would apply to a loss known to Barletta at the time it first requested that Safety add it as an additional insured via endorsement.

The Supreme Judicial Court has recognized the applicability of the "known loss doctrine," holding in SCA Services, Inc. v. Transportation Ins. Co., 419 Mass. 528 (1995) that a loss which is known at the time the insurance contract is formed is uninsurable. The Court held:

> By its very nature insurance is based on contingent risks which may or may not occur. Stated differently, the basic purpose of insurance is to protect against fortuitous events and not against known certainties. Parties wager against the occurrence or nonoccurrence of a specified event; the carrier insures against a risk, not a certainty. It follows from this general principle that an insured cannot insure against the consequences of an event which has already begun. Once the risk is eliminated, the contract for insurance no longer exists. Courts have found that the insurable risk is eliminated in the instance where an insured knows, when it purchases a policy, that there is a substantial probability that it will suffer or has already suffered a loss. At that point, the risk ceases to be contingent and becomes a probable or known loss. When the insured has evidence of a probable loss when it purchases the policy, the loss is uninsurable under that policy. This rule has been recognized in Massachusetts and by leading authorities on the subject of insurance.

Id. at 532-533 (citations omitted).

The reasoning employed by the SCA Services court is equally applicable here. Barletta, by its own admission, has no evidence that it was ever named as

an additional insured (or ever sought to be so named) until after the incident had already occurred. Because it would be antithetical to the purpose of purchasing an insurance policy—to insure against future risks—to permit an entity to obtain retroactive insurance despite knowing of an existing claim, there is no reason to interpret the language of the policy to provide retroactive coverage for the claims being made against Barletta. It would be unreasonable to conclude that Safety, which received no additional premiums in exchange for naming Barletta as additional insured, would voluntarily shoulder the certain burden of paying for defense and indemnity for a loss which had already occurred. See, e.g., Grey Direct, Inc. v. Erie Ins. Exchange, 460 F.3d 895 (C.A. 7 (Ill.), 2006) ("it is simply beyond the pale to think that Erie was willing to accept $54 in exchange for a certain duty to pay out nearly a million dollars.")

Courts in other jurisdictions have uniformly recognized that insurance coverage is inherently prospective, not retroactive, in nature, and that the default assumption must be that the parties intended that coverage apply to future events. See, e.g., Paredes v. Hilton Intern. of Puerto Rico, 896 F.Supp.

223 (D. Puerto Rico, 1995) (where an additional insured endorsement was added to a policy after an accident occurred, but did not contain an effective date, the "additional insured" status of Hilton was not retroactive to the inception of the policy); Brignac v. City of Monroe, 936 So.2d 272 (La. App. 2 Cir., 2006), (where an additional insured endorsement was issued after an accident and was backdated to take effect prior to the accident, the insurer had no duty to defend or indemnify because "the jurisprudence is well-settled that the purpose of insurance is to protect insureds against unknown, fortuitous risks, and, moreover, that the purpose of insurance policies is not to insure liability incurred prior to being named in a policy.")

**II. THE SAFETY POLICY IS NOT AMBIGUOUS.**

Safety anticipates that Barletta will argue that the provisions of the Additional Insured Endorsement were ambiguous, and thus by law must be interpreted in favor of the insured. However, ambiguity is not created merely by the absence of an effective date, particularly where to infer ambiguity would to disregard the well-established "known loss doctrine."

There is no case in Massachusetts holding that the lack of a specific effective date on an endorsement creates an ambiguity as to when such endorsement is found to be effective; indeed, Massachusetts law clearly provides that an ambiguity arises only where there is more than one rational interpretation of the relevant policy language. Trustees of Tufts Univ. v. Commercial Union Ins. Co., 415 Mass. 844, 849 (1993). "An ambiguity is not created simply because a controversy exists between parties, each favoring an interpretation contrary to the other." Lumbermens Mut. Cas. Co. v. Offices Unlimited, Inc., 419 Mass. 462, 466 (1995). If there is some question as to the meaning of a policy provision, a court must "consider what an objectively reasonable insured, reading the relevant policy language, would expect to be covered." A.W. Chesterton Co. v. Massachusetts Insurers Insolvency Fund, 445 Mass. 502, 528 (2005), quoting Trustees of Tufts Univ., *supra*, at 849. Here, as recognized by courts across the country, it is simply not reasonable to conclude that an insured would expect that a post-incident endorsement, for which no additional premium was paid, would provide coverage for a known loss.

The language of the endorsement does not in fact create an ambiguity with regard to the effective date of the endorsement. Barletta has referenced the following language from the endorsement:

> This endorsement modifies insurance provided under the following:
> BUSINESS AUTO COVERAGE FORM
>
> With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Asserting that the provisions of the Declarations Page (which Barletta claims is the "Business Auto Coverage Form" modified by the endorsement) with regard to the effective date of the policy are not specifically modified by the Endorsement, Barletta has claimed that the applicable effective date must therefore be the one listed on the Declarations Page—August 23, 2009. However, it is apparent that the Declarations Page is *not* the "Business Auto Coverage Form" referenced by the endorsement. Rather, the "Business Auto Coverage Form" referenced at the top of the endorsement is Form CA 00 01 10 01, itself named "Business Auto Coverage Form" in bold letters, centered at the top of the first page. This conclusion is further borne out by the fact that while the endorsement states "Who is An Insured is

changed to include the person or organization named in this endorsement," the Declarations Page has no section for "Who is An Insured," but rather has a section marked "Named Insured and Address." Simply put, there is no section in the Declarations Page to be modified by the endorsement. In contrast, the Business Auto Coverage Form CA 00 01 10 01 contains a specific section entitled "Who is An Insured," which is modified by the endorsement to include Barletta. The "Business Auto Coverage Form" modified by the endorsement, therefore, is Form CA 00 01 10 01.

The significance of this fact is apparent—if the only form modified by the Endorsement is the Business Auto Coverage Form CA 00 01 10 01, then the statement on the Endorsement that "the provisions of the Coverage Form apply unless modified by the endorsement" cannot be deemed as a statement that the provisions of a completely separate form (the Declarations Page) apply unless so modified. Absent a specific statement that the effective date on the Declarations Page applies (rather than the date the Endorsement was issued), there is no reason to conclude that the Endorsement is retroactively applicable, particularly in light of the above-

referenced "known loss doctrine" recognized by Massachusetts courts.

The endorsement therefore unambiguously provided "additional insured" status to Barletta as of the date of its issuance–December 16, 2009, well after the incident for which Barletta seeks coverage.

**CONCLUSION**

Because the Safety policy did not name Barletta as "additional insured" for claims for "bodily injury" until after the date of the incident for which Barletta seeks coverage, the trial court erred in holding that Barletta was entitled to defense and indemnity from Safety in connection with the claims brought by tort plaintiff Salvador Tejada in Suffolk Superior Court C.A. No. SUCV2012-04091.

Respectfully submitted,

THE DEFENDANT-APPELLANT,
SAFETY INSURANCE COMPANY,
BY ITS ATTORNEYS,

/s/ Peter L. Bosse

Peter L. Bosse, Esq., BBO #633453
Email: pbosse@BSCtrialattorneys.com
Tanya T. Austin, BBO #664478
Email: taustin@BSCtrialattorneys.com
Boyle, Shaughnessy & Campo, P.C.
695 Atlantic Avenue, 11th Floor
Boston, Massachusetts 02111
Phone: (617) 451-2000
Fax: (617) 451-5775

February 20, 2015

# ADDENDUM

## ADDENDUM TABLE OF CONTENTS

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. SUPERIOR COURT
C.A. NO.: NOCV2012-01565-C

CHARTER OAK FIRE INSURANCE COMPANY )
AND BARLETTA HEAVY DIVISION, INC. )
Plaintiffs )
)
v. )
)
GREGORY PATNOD D/B/A PATNOD TRUCKING & EXC )
AND SAFETY INSURANCE COMPANY )
Defendants )

**NOTICE OF APPEAL**

Pursuant to Mass. R. App. P. 3 and 4, Safety Insurance Company hereby provides notice of its appeal of this Court's denial of Safety's Motion for Summary Judgment, and allowance of the plaintiff's Motion for Summary Judgment against Safety in the above-captioned matter, filed on October 1, 2014. *See* Judgments, Exhibit 1.

Safety Insurance Company presents the following issues on appeal:

1. Did the trial court err in holding that Safety had a duty to defend Barletta Heavy Division, Inc. in the claims by Salvador Tejada in Suffolk Superior Court C.A. No. SUCV2012-04091?

2. Did the trial court err in holding that Safety had a duty to indemnify Barletta Heavy Division, Inc., in the claims by Salvador Tejada in Suffolk Superior Court C.A. No. SUCV2012-04091?

THE DEFENDANT,
SAFETY INSURANCE COMPANY,
BY ITS ATTORNEYS,

DATED: 10/24/17

Peter L. Bosse, Esq. (BBO# 633453)
Email: pbosse@BSCtrialattorneys.com
Tanya T. Austin, Esq. (BBO# 664478)
Email: taustin@BSCtrialattorneys.com
Boyle, Shaughnessy & Campo, P.C.
695 Atlantic Avenue, 11th Floor
Boston, MA 02111
Phone: (617) 451-2000
Fax: (617) 451-5775

# EXHIBIT 1

**Commonwealth of Massachusetts**
**County of Norfolk**
**The Superior Court**

SAF, 1931
TTA/PLB

Civil Docket **NOCV2012-01565C**

RE: Charter Oak Fire Insurance Company et al v Patnod et al

TO: Tanya T. Austin, Esquire
Boyle Shaughnessy & Campo PC
695 Atlantic Avenue
11th Floor
Boston, MA 02111

**CLERK'S NOTICE**

This is to notify you that in the above referenced case the Court's action on **10/01/2014:**

*RE: Motion of the Defendant, Safety Insurance Company, for summary judgment*

**is as follows:**

**Motion (P#11.0) After hearing, Defendants' Motion for Summary Judgment is DENIED (Raymond J. Brassard, Associate Justice) dated September 24, 2014 Notices mailed 10/1/2014**

Dated at Dedham, Massachusetts this 1st day of October, 2014.

Walter F. Timilty,
Clerk of the Courts

BY:

Assistant Clerk

Telephone:

Copies mailed 10/01/2014

**Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130** -- cvdismult_2.wpd 1367601 motden levisdeb

**Commonwealth of Massachusetts**
**County of Norfolk**
**The Superior Court**

Civil Docket **NOCV2012-01565C**

RE: Charter Oak Fire Insurance Company et al v Patnod et al

TO: Tanya T. Austin, Esquire
Boyle Shaughnessy & Campo PC
695 Atlantic Avenue
11th Floor
Boston, MA 02111

**CLERK'S NOTICE**

This is to notify you that in the above referenced case the Court's action on **10/01/2014** for

*RE: Opposition and cross-motion for summary judgment of the Plaintiffs. The Charter Oak Fire Insurance Company and Barletta Heavy Division, Inc.*

**is as follows:**

**Motion (P#11.2) After hearing, Plaintiffs Cross-Motion for Summary Judgment is ALLOWED on all claims. See record. (Raymond J. Brassard, Associate Justice) dated September 24, 2014 Notices mailed 10/1/2014**

Dated at Dedham, Massachusetts this 1st day of October, 2014.

Walter F. Timilty,
Clerk of the Courts

BY:

Assistant Clerk

Telephone:

Copies mailed 10/01/2014

*Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130* -- ordresult_1.wpd 1362604 mstallow lsvisdsb

docket 10 March

130

**Commonwealth of Massachusetts**
**County of Norfolk**
**The Superior Court**

CIVIL DOCKET# NOCV2012-01565

**CHARTER OAK FIRE INSURANCE COMPANY and BARLETTA HEAVY DIVISION, INC.,**
**Plaintiffs**

**vs.**

**GREGORY PATNOD d/b/a Patnod Trucking & Exc and SAFETY INSURANCE COMPANY,**
**Defendants**

RECEIVED FILED
CLERK OF THE COURTS
NORFOLK COUNTY
10/1/14

**SUMMARY JUDGMENT M.R.C.P. 56**

This action came on to be heard before the Court, Raymond J. Brassard, Associate Justice, presiding, upon Cross-Motions for Summary Judgment pursuant to Mass. R. Civ. P. 56. Motions filed by the Plaintiffs and Defendant Safety Insurance Company. Defendant, Gregory Patnod d/b/a Patnod Trucking & Exc. was defaulted for failure to respond to the complaint. The parties having been heard and the Court having considered the pleadings, memoranda and affidavits, finds there is no genuine issue as to material fact and that the plaintiff is entitled to a Declaratory judgment as a matter of law,

It is ***ORDERED and ADJUDGED and DECLARED,***

That Defendant Safety Insurance Company must defend and indemnify Barletta Heavy Division, Inc. as an additional insured under the Safety policy.

Dated at Dedham, Massachusetts this 1st day of October, 2014.

By: M Diane Gibbons
Assistant Clerk

A TRUE COPY
Attest: Deborah Lewis
Deputy Assistant Clerk
10/1/14

cvdjud56p.vpd 1202658 inidoo01 gibbonsd

CERTIFICATE OF SERVICE

**C.A. No.: NOCV2012-01565-C (Norfolk SC)**

*Charter Oak Fire Insurance Company and Barletta Heavy Division, Inc. v. Gregory Patnod d/b/a Patnod Trucking & Exc and Safety Insurance Company*

Pursuant to Mass. R. Civ. P. 5(a) and/or Sup. Ct. R. 9A, I, Peter L. Bosse/Tanya T. Austin, do hereby certify that a copy of the foregoing documents have been served first-class mail postage prepaid on all parties or their representatives in this action as listed below:

**Counsel for Plaintiffs**
John P. Graceffa, Esq.
Brian Suslak, Esq.
Morrison Mahoney LLP
250 Summer Street
Boston, MA 02210-1181

**Co-Defendant, Gregory Patnod d/b/a Patnod Trucking & Exc**
Gregory Patnod
Patnod Trucking, LLC
33 Tontaquon Avenue
Saugus, MA 01906

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 29th DAY OF October, 2014.

Peter L. Bosse, Esq. (BBO# 633453)
Email: pbosse@BSCtrialattorneys.com
Tanya T. Austin, Esq. (BBO# 664478)
Email: taustin@BSCtrialattorneys.com
Boyle, Shaughnessy & Campo, P.C.
695 Atlantic Avenue, 11th Floor
Boston, MA 02111
Phone: (617) 451-2000
Fax: (617) 451-5775

**MASS. R. APP. P. 16(k) CERTIFICATION**

The Appellant, Safety Insurance Company, hereby certifies that the foregoing brief complies with the rules of court that pertain to the filing of briefs pursuant to the Massachusetts Rules of Appellate Procedure.

/s/ Tanya T. Austin

Tanya T. Austin, BBO #664478

No. 2015-P-0057

CHARTER OAK FIRE INSURANCE COMPANY AND
BARLETTA HEAVY DIVISION, INC.,
PLAINTIFFS-APPELLEES,

*v.*

GREGORY PATNOD D/B/A PATNOD TRUCKNG & EXC AND
SAFETY INSURANCE COMPANY,
DEFENDANTS-APPELLANTS.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

# BRIEF FOR THE DEFENDANT-APPELLANT, SAFETY INSURANCE COMPANY

NORFOLK COUNTY

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS